LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 14 1966
JOHN F. DAVIS, CLERK

No. 345

IN THE

# Supreme Court of the United States

---

RALPH T. HICKEY, FRANK J. GRAVES, RAYMOND J. HEIDERSCHEIDT, JOSEPH M. KEARNS and JAMES GRAVES
*Petitioners,*

vs.

THE UNITED STATES OF AMERICA,
*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

ALBERT E. JENNER, JR.
THOMAS P. SULLIVAN
HUGH M. KING
135 S. La Salle
Chicago, Illinois 60603

ROBERT J. LEALI
329 Lake
Woodstock, Illinois
*Attorneys for petitioners*

*Of counsel:*
RAYMOND, MAYER, JENNER & BLOCK
CARROLL, LEALI & GITLIN

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

# INDEX


| | PAGE |
|---|---|
| The opinion below | 1 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| Constitutional and Statutory provisions involved | 5 |
| Statement of the case | 6 |
| The indictment | 6 |
| The transaction involved in the indictment | 7 |
| Evidence introduced by the Government as to pre-conspiracy declarations | 8 |
| Evidence introduced by the Government as to post-conspiracy declarations | 9 |
| The Government's position and the trial judge's rulings and instructions as to the relevancy of repayment of the loans and the duration of the conspiracy | 10 |
| Refusal of right of cross examination | 11 |
| The instruction relating to misapplication | 13 |
| The opinion of the Court of Appeals for the Seventh Circuit | 13 |

PAGE

Reasons for granting the writ ..... 15

I. By inferring from acts of concealment after control of Concord was transferred that there was a subsidiary conspiracy to repay the loans, the Court of Appeals has rendered a decision which conflicts with the applicable decisions of this Court and contradicts the position of the government and the trial judge that repayment of the loans was irrelevant .... 15

II. In approving admission against all defendants of conversations which occurred before the conspiracy began, the Court of Appeals has decided an important federal question in a way which conflicts with the principles announced by this Court, and with the holdings of other Courts of Appeal ..... 23

III. The trial court's instruction as to the charge in count 2 expanded the indictment contrary to the rule of Stirone v. United States, 361 U.S. 212 (1960) ..... 25

A. The trial court's instruction varied materially from the crime charged in the indictment ..... 26

B. The erroneous instruction as to the meaning of "misapplication" infected the entire judgment ..... 27

PAGE

IV. The refusal to permit defense counsel to cross examine Government witnesses at the time their testimony was admitted against defendants violated defendants' constitutional right of confrontation of adverse witnesses

This is an important and novel federal question which should be resolved by this Court .. 28

Conclusion ..... 32

Appendix A — Opinion of the United States Court of Appeals for the Seventh Circuit filed April 4, 1966 .....App. 1

Appendix B — Order of the United States Court of Appeals for the Seventh Circuit entered April 4, 1966 .....App. 37

Appendix C — Order of the United States Court of Appeals for the Seventh Circuit entered May 18, 1966 .....App. 37

Appendix D — Order of the United States Supreme Court (per Mr. Justice Tom C. Clark) entered June 14, 1966 .....App. 37

## TABLE OF CASES

PAGE

Atkins v. United States, 307 F.2d 937 (9th Cir. 1962).... 22n

Blumenthal v. United States, 332 U.S. 539 (1947)..... 20

Blumenfield v. United States, 284 F. 2d 46, 56 (8th Cir. 1960), cert. denied 365 U.S. 812 ..... 22n

Brookhart v. Janis, 86 S.Ct. 1245 (1966) ..... 31

Collenger v. United States, 50 F.2d 435 (7th Cir. 1931), cert. denied 284 U.S. 654 ..... 24-25

Continental Baking Co. v. United States, 281 F.2d 137 (6th Cir. 1960) ..... 24

Dennis v. United States, 34 L.W. 4556 (1966) ..... 19

Forman v. United States, 361 U.S. 416 (1960) ..... 17

Grunewald v. United States, 353 U.S. 391 (1957)....15, 17, 19

Harrison v. United States, 7 F.2d 259 (2d Cir. 1925) .... 21n

Krulewitch v. United States, 336 U.S. 440 (1949) ....15, 16, 20, 24n

Logan v. United States, 144 U.S. 263 (1892) ..... 24n

Lutwak v. United States, 344 U.S. 604 (1953) ....15, 20, 22

Minner v. United States, 57 F.2d 506 (10th Cir. 1932).. 24

Morrow v. United States, 11 F.2d 256 (8th Cir. 1926).. 24

Mount v. United States, 333 F.2d 39 (2d Cir. 1957), cert. denied, 379 U.S. 900 ..... 22n

Pointer v. Texas, 380 U.S. 400 (1965) ..... 31

Stirone v. United States, 361 U.S. 212 (1960) ..... 27

Taylor v. United States, 260 F.2d 737 (D.C. Cir. 1958).. 24

United States v. Allegretti, 340 F.2d 254 (7th Cir. 1964), cert. denied 381 U.S. 911 (1965) ..... 22n

PAGE

United States v. Baxa, 340 F.2d 259 (7th Cir. 1965) summarily reversed without argument on Solicitor General's confession of error 381 U.S. 353 (1965).. 22n

United States v. Brecher, 242 F.2d 642 (2d Cir. 1957).. 22n

United States v. Britton, 107 U.S. 655 (1882) ..... 26

United States v. Bucur, 194 F.2d 297 (7th Cir. 1952) .... 24n

United States v. Dennis, 183 F.2d 201 (2d Cir. 1950), aff'd. on other grounds, 341 U.S. 494 ..... 24n

United States v. General Motors, 121 F.2d 376 (7th Cir. 1941), cert. denied 314 U.S. 618 ..... 24n

United States v. Klock, 210 F.2d 217 (2nd Cir. 1954).... 28

United States v. Spector, 326 F.2d 345 (7th Cir. 1963).. 27

United States v. Witt, 215 F.2d 580 (2d Cir. 1954) .... 24n

ARTICLES

Goldstein, *The Krulewitch Warning: Guilty by Association,* 54 Geo. L.J. 133 (1965) ..... 20n

Klein, *Conspiracy — The Prosecutor's Darling,* 24 Brooklyn L. Rev. 1 (1957) ..... 20n

Levie, *Hearsay and Conspiracy,* 52 Mich. L. Rev. 1159 (1954) ..... 20n

Stone, *Conspiracy, Concealment and the Statute of Limitations,* 70 Yale L. J. 1311 (1961) ..... 20n

Tillim, *The Dilemma In Post Conspiracy Declarations,* 12 Intramural L. Rev. of New York Univ. 106 (1957) ..... 20n

*Developments In the Law of Conspiracy,* 72 Harv. L. Rev. 920 (1959) ..... 20n

*The Hearsay Exception For Co-Conspirators' Declarations,* 25 U. Chi. L. Rev. 530 (1958) ..... 20n

IN THE

# Supreme Court of the United States

No.

RALPH T. HICKEY, FRANK J. GRAVES, RAYMOND J. HEIDERSCHEIDT, JOSEPH M. KEARNS and JAMES GRAVES

*Petitioners,*

vs.

THE UNITED STATES OF AMERICA,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Ralph T. Hickey, Frank J. Graves, Raymond J. Heiderscheidt, Joseph M. Kearns and James Graves pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case.

### The Opinion Below

The opinion of the Court of Appeals is printed as Appendix A hereto, and is reported at 360 F.2d 127.

## Jurisdiction

The judgment of the Court of Appeals was entered on April 4, 1966. (Appendix B.) A petition for rehearing *en banc* was denied on May 18, 1966 (Appendix C), and the judgment became final on that date.

On June 14, 1966, this Court (per Mr. Justice Tom C. Clark), extended the time for filing this petition to and including July 15, 1966 (Appendix D).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## Questions Presented

1. Count I of the indictment charged defendants with having conspired wilfully to misapply and receive $250,000 of the funds of Concord Savings & Loan Association, representing a portion of two mortgage loans made by Concord in November, 1960. No charge was made in the indictment that the conspiracy included an agreement to conceal the misapplication or extended beyond the time the loans were disbursed in November, 1960. The proof established that the sale of Concord by defendant Hickey to defendant Frank Graves was concluded contemporaneously with disbursment of the mortgage loans in November, 1960.

The trial judge refused, on the government's objection, to permit the defense to prove that the mortgage loans had been repaid.

The trial judge instructed the jury to consider against all defendants evidence of conversations which occurred in 1961 and 1962, at which fewer than all defendants were present, in which efforts were made to alter bank records

and to persuade a witness not to cooperate with agents of the Federal Bureau of Investigation. The Court of Appeals affirmed this ruling based on its holding that the conspiracy included repayment of the loans, and continued until the loans were repaid in 1964.

This holding presents the question whether the Court of Appeals, in inferring the existence of a continuing conspiracy to repay the loans on the basis of acts of concealment which occurred after November, 1960, has decided the case in a way which conflicts with the rule announced by this Court in *Krulewitch* v. *United States,* 336 U.S. 440 (1949), *Lutwak* v. *United States,* 344 U.S. 604 (1953), and *Grunewald* v. *United States,* 353 U.S. 391 (1957), and has thereby erroneously extended for over three years the "conspiracy" exception to the hearsay rule.

This holding presents the further issue of whether the trial court adequately instructed the jury as to the rules for determining when the conspiracy ended, and the distinction between a continuing conspiracy and a subsidiary conspiracy based upon acts of concealment taking place after the central objective of the conspiracy has been achieved.

2. The Court of Appeals also approved the ruling of the trial court in admitting against all defendants evidence of conversations which occurred before the conspiracy began, on the theory that these conversations aided in understanding later events. This ruling presents the question of whether the decision of the Court of Appeals is contrary to the heretofore unanimous holding of Courts of Appeal (as well as general principles previously announced by this Court) that pre-conspiracy declarations are admissible only against those present when the declarations occurred.

3. Count 2 of the indictment charged that defendants wilfully misapplied Concord's funds in violation of 18 U.S.C. § 657 by causing Concord to make mortgage loans on inadequate security. The trial judge, however, instructed the jury that the government proved Count 2 if it showed that an officer of Concord had undisclosed interest in the loans, or the loans were made to a fictitious borrower, with the requisite intent. The Court of Appeals approved this instruction. This ruling presents the question whether the judge's instruction improperly altered the charge against defendants in violation of their Fifth Amendment right to have the prosecution begun by a grand jury indictment, contrary to the rule of *Stirone* v. *United States*, 361 U.S. 212 (1960).

4. As each government witness testified, the trial judge instructed the jury that his testimony was to be considered only against certain named defendants. At the close of the government's case in chief, the judge instructed the jury to consider all prior testimony against all defendants. The trial judge, however, refused to permit defense counsel to cross examine the witnesses whose testimony had not previously been admitted against their clients. The Court of Appeals affirmed. The question presented is whether this procedure violated defendants' constitutional right to confront and cross examine the witnesses against them, since the witnesses did not become "witnesses against" a defendant until the trial judge ruled that the testimony was admissible against that defendant.

## Constitutional and Statutory Provisions Involved

The Fifth Amendment to the United States Constitution provides in part:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law; . . ."

The Sixth Amendment to the United States Constitution provides in part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; . . ."

18 U.S.C. § 657 provides in part:

> "Whoever, being an officer, agent or employee of . . . any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation . . . wilfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both; . . ."

18 U.S.C. § 1006 provides in part:

> "Whoever being an officer, agent or employee of . . . any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation . . . with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of such corporation, institution or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

## STATEMENT OF THE CASE

The transcript of this long and complicated case consists of over 3,400 pages. The facts are stated at some length in the opinion of the Court of Appeals. We submit the following capsule summary of facts relevant to the questions raised by this petition:

### The Indictment

Defendants were tried on a three-count indictment. Count II charges that defendant Hickey, an officer of Concord Savings and Loan Association ("Concord"), wilfully misapplied funds of Concord with intent to defraud, by causing Concord to disburse two mortgage loans of approximately $250,000, knowing that Concord did not receive sufficient collateral to secure the loans, in violation of 18 U.S.C. § 657, and that the other defendants aided and abetted Hickey in the commission of this crime. (A. 5-6.)

Count III charges Hickey, an officer of Concord, with unlawful receipt of the $250,000 mortgage loans with intent to defraud, in violation of 18 U.S.C. § 1006, and that the other defendants aided and abetted him in the commission of this offense. (A. 7-8.)

Count I of the indictment charges in substance that on or about January 20, 1960, and continuing to on or about the date of the return of the indictment (January, 1964), defendants conspired with each other to defraud Concord by committing the crimes alleged in Counts II and III. Fifteen overt acts are specified, the first on January 20, 1960, and the last in July, 1963. None of the overt acts charged relates to repayment of the loans, nor is there any charge in the indictment that the conspiracy included an agreement regarding repayment or concealment of the loans. (A. 3-5.)

## The Transaction Involved In the Indictment

The following facts and dates are essential to an understanding of the issues discussed in this petition:

1. In late June, 1960, Frank and James Graves were introduced to Ralph Hickey, then owner of Concord Insurance Agency, and President and General Manager of the Concord Savings and Loan Association. They began negotiations for the sale of Concord by Hickey to Frank Graves for $250,000. (A. 486-8, 560-2, 666, 696-7.)

2. In September, 1960, Frank Graves and Hickey signed written contracts for the sale of Concord by Hickey to Frank Graves for $250,000. (A. 948-950.)

3. To finance this purchase, the Graves' applied at Concord for mortgage loans on two parcels of realty. The applications were made in the name of a corporation owned by Mr. Homer Fitzgerald. The mortgage loans were approved by Concord in the total amount of $350,000. (A. 41-43, 921-3.)

4. The Hickey-Frank Graves contracts were closed on November 2, 1960. The proceeds of the loans were paid by Concord at Fitzgerald's direction to the Graves', who in turn paid $250,000 to Hickey for his stock interest in the Concord Insurance Agency and for control of Concord. On the same day, the annual stockholders meeting of Concord was held, Hickey resigned from the board, and Frank Graves, Heiderscheidt and Joseph Kearns were elected directors. Frank Graves was thereupon elected by the board of directors as Secretary and Managing Officer and Heiderscheidt was elected Vice President and Treasurer. (A. 922-3, 952.)

5. Hickey took no further part in the management or control of Concord.

---

The foregoing is a summary of the evidence relevant to this petition as to the events which transpired from the time Hickey met Frank and James Graves until November 2, 1960, when the loan transactions were accomplished, Hickey was paid in full, and control of Concord was transferred from Hickey to Frank Graves.

**Evidence Introduced By the Government As To Pre-Conspiracy Declarations**

Over the repeated objections of defense counsel, the Government was permitted to introduce evidence of numerous conversations and declarations pertaining to James and Frank Graves' acquisition of Hartman Estates—one of the two parcels of realty on which Concord later made a mortgage loan—although these conversations took place prior to June, 1960, that is, before Hickey met the other defendants and they began to negotiate for the purchase and sale of the association. (*E.g.*, A. 104-7, 115-7, 972.)

The purpose and effect of this evidence was to show that the former owners of the property, Messrs. Hartman and Coquillard, were duped and defrauded by James and Frank Graves into selling.

Hickey, Heiderscheidt and Kearns did not participate in any of these conversations. However, at the close of the Government's case the trial court directed the jury to consider the evidence of these conversations as to *all* defendants. (A. 345.)

## Evidence Introduced By the Government As To Post-Conspiracy Declarations

Over the repeated objections of defense counsel, the Government was permitted to introduce against *all* defendants evidence of numerous conversations and events which occurred *after* the funds were disbursed and control of Concord was transferred in November, 1960:

(i) Evidence was introduced of meetings and conversations which Frank and James Graves and Heiderscheidt had with Neal Rosenfeld of the American National Bank and Trust Company of Chicago in February, 1961, in which efforts were made to persuade Rosenfeld to remove from the bank files certain documents relating to the mortgaged property. (A. 311-320.)

Kearns and Hickey had no connection whatsoever with these conversations. The trial judge, however, directed the jury to consider this evidence as against all of the defendants.

(ii) Evidence was introduced by the Government that in February, 1962—15 months after the closing—Hickey had a chance meeting with Fitzgerald, who told Hickey that F.B.I. agents had been talking to him about the 1960 mortgage loan transaction. Soon thereafter, a meeting was held among Hickey, James Graves, Joseph Kearns and Fitzgerald, during which efforts were made to persuade Fitzgerald to resort to the Fifth Amendment and to retain a lawyer of James Graves' choosing. (A. 211-212.)

Frank Graves and Heiderscheidt were not present and had no connection with this conversation. Nevertheless, the trial judge directed the jury to consider this evidence as against all defendants.

(iii) The Government introduced evidence of three civil suits brought by Hartman and Coquillard, in which the plaintiffs claimed the defendants had obtained title to Hartman Estates by fraud and deceit. (A. 129-131, 131-132.)

Although not all of the defendants were parties to these suits, the trial judge directed the jury to consider this evidence against all of the defendants.

(iv) Fitzgerald testified he was going to file a lawsuit against James Graves to recover $50,000 he claimed James Graves had taken from him. This claim has no connection whatsoever with the instant case. The evidence tended to show that James Graves had defrauded Fitzgerald and had appropriated money not belonging to him for his own use. (A. 268-271).

Frank Graves, Kearns, Heiderscheidt, and Hickey had absolutely no connection with this transaction. The trial judge, however, directed the jury to consider this evidence as against all defendants.

(v) The Government was permitted to introduce a large number of documents relating to events which took place after November, 1960, none of which involved all of the defendants. (A. 914, 917, 919, 920, 929, 931, 954, 955.) The trial judge directed the jury to consider this evidence against all defendants.

**The Government's Position and the Trial Judge's Rulings and Instructions As To the Relevancy of Repayment of the Loans and the Duration of the Conspiracy.**

At the conclusion of the government's case in chief, the trial judge made the following statement to the jury (A. 345):

> "Ladies and gentlemen of the jury, I instruct you that all the evidence which you have heard and or

seen, given through the witnesses here will now be considered by you as to all of the defendants."

During the defendants' case in chief, defense counsel attempted on several occasions to establish (on the issue of defendants' intent) that the mortgage loans were repaid to Concord. However, government counsel objected that repayment of the loans was immaterial. For example, government counsel stated:

> ". . . it is immaterial whether or not the loan was paid off. . . ." (A. 585-6, 588-9; Tr. 2158-9, 2163-4.)
>
> "Whether it [the loan] was paid or not is of no materiality to these proceedings." (A. 770-771; Tr. 2723-4.)

The trial judge upheld this position, and excluded all evidence of repayment of the loans. (A. 586, 771.)

The trial judge gave no instruction to the jury concerning commencement of the conspiracy. The only instruction which the trial judge gave relating to termination of the alleged conspiracy was (A. 896-7):

> "After a conspiracy, ladies and gentlemen of the jury, has come to an end either by the accomplishment of the common design or by the parties' abandoning same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such act or making such statement."

**Refusal of Right of Cross Examination.**

As each witness took the stand during the government's case in chief, and sometimes during the testimony of a witness as he recounted various conversations, government counsel stated the names of the defendant or defendants as against whom the testimony was offered, whereupon

the trial judge instructed the jury to consider the testimony only as against those defendants. (A. 37, 41, 45-47, 49, 50, 59, 88, 89, 97, 101, 104, 132, 167, 176, 182, 184, 201, 203, 206, 211, 269, 276, 289, 310, 312.) The same procedure was followed as to the government's exhibits. (A. 161-3, 310.)

In many instances, cross examination was conducted only by counsel for the defendant or defendants as to whom the evidence was offered. While counsel for the other defendants were offered an opportunity to cross examine, with few exceptions they declined to do so since the evidence had not been offered or admitted as to their clients, and when cross examination was undertaken by them it was not the careful, detailed questioning which would have been conducted had the witness' testimony been admitted generally. (A. 39, 40, 42, 50, 52, 64, 71, 74, 95, 97, 100, 102, 113, 126, 128, 141, 159, 171, 172, 179, 190, 194, 195, 212, 219, 221, 224, 233, 272, 273, 283, 287, 299-301, 304, 309, 310, 319, 325, 326.)

After the last witness had testified in the government's case in chief, government counsel moved "that all of the evidence . . . . which had been in the past restricted to particular defendants, be now applied to all of the defendants in this case." (A. 326.) Defense counsel took the position that each defendant was entitled to cross examine the government's witnesses *at the time the testimony of those witnesses was offered against him.* (A. 336-339, 341, 343-345.) The trial judge ruled that the testimony of all government witnesses was admissible against all defendants, and denied defendants' request for permission to cross examine. (A. 345.)

### The Instruction Relating to Misapplication.

Count 2 of the indictment charged that Hickey misapplied funds of Concord in that he caused Concord to make the mortgage loans, "well knowing that [Concord] did not receive sufficient collateral to secure the said alleged mortgage loans." (A. 6.) Nevertheless, over defense objections, the trial judge defined "misapplication" as that term is used in 18 U.S.C. § 657 as follows (A. 899):

> "Misapplication under this statute may be committed in any or all of the following ways:
>
> "One, by an officer of a savings and loan association causing a loan to be made to his own benefit and concealing his interest in the loan from the association;
>
> "Two, by an officer of a savings and loan association causing a loan to be made, knowing that the loan is insufficiently secured and concealing that fact from the association;
>
> "Three, by an officer of a savings and loan association causing a loan to be made knowingly to a fictitious borrower."

### The Opinion of the Court of Appeals For The Seventh Circuit

Defendants appealed the judgments of conviction to the United States Court of Appeals for the Seventh Circuit. Insofar as pertinent here, the Court of Appeals held:

—That the trial court had not erred in admitting against all defendants evidence of conversations which occurred prior to the inception of the conspiracy in June, 1960. (App. 22-24; see pp. 23 to 25 of this petition.)

—That the conspiracy did not end until the mortgage loans were repaid; hence the trial judge did not err in admitting against all defendants evidence of conversations

which occurred after the Graves-Hickey contracts were closed and the central objective of the conspiracy had been achieved. The Court did not mention that defense proof of repayment had been excluded at the trial. The Court conceded that if the conspiracy came to an end in November, 1960 (as defendants contended), "the trial court committed prejudicial error." (App. 24-27; see pp. 15 to 22 of this petition.)

—That the trial court correctly instructed the jury with respect to the word "misapplication" under 18 U.S.C. § 657. (App. 32-35; see pp. 25 to 28 of this petition.)

—That the trial court did not err in refusing to permit defense counsel to cross examine government witnesses at the time their testimony was introduced against the respective defendants. (App. 35-36; see pp. 28 to 32 of this petition.)

## REASONS FOR GRANTING THE WRIT

---

### I.

### BY INFERRING FROM ACTS OF CONCEALMENT AFTER CONTROL OF CONCORD WAS TRANSFERRED THAT THERE WAS A SUBSIDIARY CONSPIRACY TO REPAY THE LOANS, THE COURT OF APPEALS HAS RENDERED A DECISION WHICH CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT AND CONTRADICTS THE POSITION OF THE GOVERNMENT AND THE TRIAL JUDGE THAT REPAYMENT OF THE LOANS WAS IRRELEVANT.

The decision of the Court of Appeals is in direct conflict with the three decisions of this Court, *viz., Grunewald* v. *United States,* 353 U.S. 391 (1957), *Lutwak* v. *United States,* 344 U.S. 604 (1953), and *Krulewitch* v. *United States,* 336 U.S. 440 (1949).

Each of those cases holds that " . . . after the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment." (*Grunewald* v. *United States,* 353 U.S. at 401-402.)

The Court of Appeals conceded that, "If the conspiracy ended as asserted by the defendants [in November, 1960], there would be no question, in light of the decisions re-

ferred to [*Grunewald, Lutwak,* and *Krulewitch*], that *the trial court committed prejudicial error.*" (Emphasis added.) (App. 24.)

Contrary to the unequivocal teaching of these cases, and while paying lip service to them (App. 24-25), the Court of Appeals inferred from acts of concealment after attainment of the central objective of the conspiracy (transfer of control of Concord to the Graves' and payment of the purchase price to Hickey in November, 1960) that there was a subsidiary conspiracy to conceal the misapplication.

The Court of Appeals reasoned that repayment must have been a part of the initial conspiracy, because "If the plan was to be successful, it is logical that it included some means for repayment. . . . default on these loans would have brought them into immediate question. . . ." (App. 26.) The Court of Appeals concluded that there was "ample evidence that repayment of the loans was preconceived" (App. 26), and that "A definite pattern of concealment through diversion and subterfuge was established" (App. 27). The evidence relied on by the Court consists almost exclusively of acts of concealment which occurred *after* transfer of control of Concord in November, 1960.

As a result of this ruling, the Court of Appeals has extended for over three years the "conspiracy" exception to the hearsay rule in precisely the fashion condemned in *Krulewitch* v. *United States,* 336 U.S. 440, 443-444 (1949). Here, as in *Krulewitch,* damaging evidence was admitted against all defendants, including those not present, of declarations " . . . not made in furtherance of the alleged criminal [misapplication] . . . conspiracy charged, but made in furtherance of an alleged implied but uncharged

conspiracy aimed at preventing detection and punishment, . . . " (336 U.S. at 444.)

The ruling of the Court of Appeals is especially remarkable in light of the trial court's exclusion of defense proffered proof of repayment, on the ground that *repayment of the loans was immaterial to the case!* Thus, in the trial court the government successfully urged the irrelevancy of repayment, while on appeal a supposed (but unproven) agreement to repay was used as the basis for vitiating the hearsay rule as to declarations which occurred after November, 1960.*

It may be argued that the jury was entitled to infer that repayment was part of the central object of the original conspiracy, under the concepts expressed in *Grunewald* v. *United States,* 353 U.S. at pages 406 to 415 (1957), and *Forman* v. *United States,* 361 U.S. 416 at pages 422 to 424 (1960). But in each of those cases, (a) the indictment expressly alleged the existence of a conspiracy to violate the income tax laws *and* to conceal the violations until the statute of limitations expired (see 353 U.S. at 394, and 361 U.S. at 420-421), and (b) new trials were ordered because the jury was instructed with regard to the erroneous "implied subsidiary conspiracy" theory, and was not adequately instructed as to the law relating to scope and duration of the original conspiratorial agreement (see 353 U.S. at 413-415, and 361 U.S. at 423-424).

---

*In its opinion, the Court of Appeals makes no mention of the fact that defendants' efforts to prove repayment were precluded by the trial court on government counsel's objections, although this fact was brought forcefully to the Court's attention (defendants' opening brief, pp. 35, 40, 101-104, and reply brief, pp. 17, 32-34).

In contrast, in the case at bar:

(a) The only allegations in the indictment relating to the purpose or central object of the conspiracy concern the wilful misapplication of Concord's funds through which Hickey received $250,000 in November, 1960; nothing whatever is stated in the indictment about any continuing conspiracy or original agreement to repay the loan.

(b) At the end of the government's case in chief, the trial judge explicitly instructed the jury to consider *all* of the government's evidence against *all* defendants. (A. 345.)

(c) Proffered defense proof of repayment of the loans was rejected as irrelevant on the government's objections. (A. 585-586, 588-590, 714-716, 726-727, 743-744, 770-775.)

(d) At the conclusion of the trial, no instructions were given to the jury to enable it to assess the proof against the relevant rules of law as expounded by this Court in the cases cited above (see A. 888-907). The jury was not advised that it must first determine precisely what the conspiratorial agreement was, and it was left in the dark as to how to determine when the conspiracy came to an end. The only limitation placed on the jury's consideration of the conversations which took place after November, 1960 was the vague statement that after a conspiracy has come to an end by the accomplishment of the *common design,* evidence of declarations thereafter made by one can be considered only against the speaker (A. 896-7). This instruction was contradictory of the trial court's earlier admonition that the jury should consider all government proof against all defendants (A. 345). No distinction was drawn between the original conspiratorial agreement and acts of

concealment spontaneously undertaken to cover up a prior misapplication.*

Thus, the trial court's handling of the proof was more erroneous than that which compelled reversal in *Grunewald* (353 U.S. at 413-414):

> ". . . this charge did not adequately enlighten the jury as to what they would have to find in order to conclude that the conspiracy was still alive after October 25, 1951. For the charge as given failed completely to distinguish between concealment in order to achieve the central purpose of the conspiracy (that is, the immunization of the taxpayers from tax-evasion prosecution), and concealment intended solely to cover up an already executed crime (that is, the obtaining of the 'no prosecution' rulings). The jury was never told that these overt acts of concealment could be taken as furthering the conspiracy only if the basic criminal aim of the conspiracy was not yet attained in 1949. . . .
>
> * * *
>
> "We thus find that the judge's charge left it open for the jury to convict even though they found that the acts of concealment were motivated purely by the purpose of the conspirators to cover up their already accomplished crime. And this, we think, was fatal error. . . ."

This Court has on several occasions expressed concern about the risks of unfairness in conspiracy trials, and the care which trial judges must take in instructing the jury with regard to the applicable rules of law in order to protect the right of each of the defendants. *E.g., Dennis* v. *United States,* 34 L.W. 4556, 4557 (1966) (". . . the possi-

---

* The Court of Appeals did concede that "The attempts to alter trust records [February, 1961] and to keep Fitzgerald quiet [February, 1962] have an element of spontaniety about them. . . . " (App. 27.)

bility, inherent in a criminal conspiracy charge, that its wide net may ensnare the innocent as well as the culpable''); *Blumenthal* v. *United States,* 332 U.S. 539, 559-560 (1947). (''Perhaps even at best the safeguards provided by clear rulings on admissibility, limitations of the bearing of evidence as against particular individuals, and adequate instructions, are insufficient to ward off the danger entirely. It is therefore extremely important that those safeguards be made as impregnable as possible''); *Lutwak* v. *United States,* 344 U.S. 604, 619 (1953) (''These declarations must be carefully and clearly limited by the court at the time of their admission and the jury instructed as to such declarations and the limitations put upon them. . . .''); *Krulewitch* v. *United States,* 336 U.S. 440, 444 (1949).

As long ago as 1925, the Senior Circuit Judges stated that ''the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant.'' (Report of the Attorney General of the United States for 1925, p. 4.) Other responsible commentators have voiced similar opinions.*

---

* See, for example, Levie, *Hearsay and Conspiracy,* 52 Mich. L. Rev. 1159, 1167-75 (1954); Klein, *Conspiracy—The Prosecutor's Darling,* 24 Brooklyn L. Rev. 1, 7-11 (1957); *The Hearsay Exception For Co-Conspirators' Declarations,* 25 U. Chi. L. Rev. 530, 539-542 (1958); *Developments In the Law of Conspiracy,* 72 Harv. L. Rev. 920, 983-7 (1959); Stone, *Conspiracy, Concealment and the Statute of Limitations,* 70 Yale L. J. 1311, 1349-50 (1961); Goldstein, *The Krulewitch Warning: Guilt by Association,* 54 Geo. L. J. 133, 139-142, 153 (1965); Tillim, *The Dilemma In Post Conspiracy Declarations,* 12 Intramural L. Rev. of New York Univ. 106, 107-108 (1957).

The case at bar provides an apt illustration of how injustice can result when the rules are not scrupulously followed and the jury carefully instructed. For example, non-participants were charged with responsibility for conversations—which took place long after the commission of the substantive crimes charged — in which co-defendants sought to alter and destroy bank records (February, 1961), and to persuade a witness to assert the privelege against self-incrimination (February, 1962). There was no evidence concerning defendant Hickey from the time he received the purchase price in November, 1960 until his chance meeting with Fitzgerald in February, 1962. And implicit in the Court's opinion is the concession that unless the conspiracy was deemed to extend beyond 1960, there would not have been sufficient evidence to submit the conspiracy count to the jury against the defendant Kearns (the only count he was convicted on) (App. 20).

The importance of strict adherence to the principles announced by this Court in *Krulewitch, Lutwak* and *Grunewald* is all the more important today because of the extensive use of conspiracy indictments being made by federal prosecutors throughout the country. The conspiracy count—"that darling of the modern prosecutor's nursery"*—is almost invariably included in cases involving multiple defendants. It is apparent that at least in the

---

* Judge Learned Hand in *Harrison* v. *United States*, 7 F.2d 259, 263 (2d Cir. 1925).

Seventh Circuit,* and probably in others,** the protective rules of law in this area are not being observed.

It has been six years since this Court spoke on the subject of termination of conspiracies (*Forman* v. *United States*, 361 U.S. 416 (1960)), and thirteen years since this Court considered that subject with respect to the hearsay rule (*Lutwak* v. *United States*, 344 U.S. 604 (1953)).

The exercise by this Court of its supervisory authority is clearly needed.

---

* In addition to the case at bar, see *United States* v. *Baxa*, 340 F.2d 259, 261-262 (7th Cir. 1965) (statements made by one defendant at the time of his arrest admitted against all defendants); summarily reversed without argument on the Solicitor General's confession of error, 381 U.S. 353 (1965); *United States* v. *Allegretti*, 340 F.2d 254, 256 (7th Cir. 1964), *cert. denied* 381 U.S. 911 (1965), relied upon by the Court of Appeals in the case at bar (statements made by one defendant after his arrest admitted against all defendants).

** See for example, *Atkins* v. *United States*, 307 F.2d 937 (9th Cir. 1962), relied upon by the Court of Appeals in the case at bar (a threat by one defendant to a witness to a robbery after the robbery had been committed admitted against all defendants); *United States* v. *Brecher*, 242 F. 2d 642, 645 (2d Cir. 1957) (although the central object of the conspiracy had been achieved, evidence that one defendant told a co-conspirator what to say to the police admitted against a second defendant who was already in police custody); *Mount* v. *United States*, 333 F.2d 39, 44 (5th Cir. 1964), *cert. denied*, 379 U.S. 900 (statements made by several defendants while attempting to destroy counterfeit money, after the conspiracy terminated, admitted as against non-participants); *Blumenfield v. United States*, 284 F.2d 46, 56 (8th Cir. 1960), *cert. denied* 365 U.S. 812 (statements made to a co-defendant by a woman transported across state lines for purposes of prostitution, after the transportation had taken place, concerning her perjured testimony before the federal grand jury, admitted against a defendant who was not present.)

## II.

## IN APPROVING ADMISSION AGAINST ALL DEFENDANTS OF CONVERSATIONS WHICH OCCURRED BEFORE THE CONSPIRACY BEGAN, THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH CONFLICTS WITH THE PRINCIPLES ANNOUNCED BY THIS COURT, AND WITH THE HOLDINGS OF OTHER COURTS OF APPEAL.

The Court of Appeals sanctioned a further breach of fundamental principles of criminal justice and the hearsay rule by approving admission against all defendants evidence of conversations which occurred *before* the conspiracy began but in which fewer than all defendants participated.

The damaging conversations which two defendants had with Messrs. Hartman and Coquillard took place before Hickey had met the other defendants. Since Hickey was the only defendant capable of violating 18 U.S.C. §§ 657 and 1006, because he was the only defendant who was then an officer of Concord, it is obvious that the conspiracy had not commenced at the time of these conversations. The Court of Appeals conceded this fact, but, with no basis in the record upon which to do so, ascribed knowledge of these conversations to the non-participating defendants (App. 22-23), and confused relevancy with admissibility against non-participants by concluding that since the pre-conspiracy conversations aided in understanding later transactions, "They were admissible against all conspira-

tors once a prima facie conspiracy was proved." (App. 23-24.)*

So far as we are able to ascertain, the question of the admission of *pre*-conspiracy declarations has never been directly addressed by this Court. However, in many cases this Court has stated that the "conspiracy" exception to the hearsay rule applies only to declarations during the existence of the conspiracy, which perforce excludes those which occurred before the conspiracy commenced.**

Except for the decision of the court below in this case, the several Courts of Appeal which have been presented with this issue uniformly hold that pre-conspiracy declarations are not admissible against non-participants. *Continental Baking Co.* v. *United States,* 281 F.2d 137, 152-153 (6th Cir. 1960); *Morrow* v. *United States,* 11 F.2d 256, 259-260 (8th Cir. 1926); *Minner* v. *United States,* 57 F.2d 506, 511 (10th Cir. 1932) ("The declarations of Norton occurred prior to the formation of the conspiracy charged and were not binding upon nor admissible against Minner"); *Taylor* v. *United States,* 260 F.2d 737, 738 (D.C. Cir. 1958). In *Collenger* v. *United States,* 50 F.2d 345 (7th

* To support its ruling, the Court cited cases in which late entrants into a conspiracy were held to adopt declarations of co-conspirators which occurred during the existence of the conspiracy (*United States* v. *Bueur,* 194 F.2d 297, 302 (7th Cir. 1952); *United States* v. *Witt,* 215 F.2d 580, 583 (2d Cir. 1954)), even though the events occurred at a time barred by the statute of limitations (*United States* v. *General Motors,* 121 F.2d 376, 408 (7th Cir. 1941), *cert. denied* 314 U.S. 618; *United States* v. *Dennis,* 183 F.2d 201 (2d Cir. 1950), aff'd, on other grounds, 341 U.S. 494). (App. 24.)

** ". . . where made in furtherance of the objectives of a *going conspiracy,* such statements are admissible as exceptions to the hearsay rule." *Krulewitch* v. *United States,* 336 U.S. 440, 443 (1949) (emphasis added); "But only those acts and declarations are admissible under this rule, which are done and made *while the conspiracy is pending,* and in furtherance of its object." *Logan* v. *United States,* 144 U.S. 263, 309 (1892) (Emphasis added).

Cir. 1931), *cert. denied* 284 U.S. 654, the court below applied the correct rule (50 F.2d at 348):

> "It is elementary that a statement of a conspirator, in order to bind the conspirator, must be a statement not made in the formation of the conspiracy, but after the conspiracy is formed, and in furtherance of its objects. . . ."

Even when the correct rules of evidence are applied, defense of an indictment for conspiracy is fraught with danger to the innocent. But when, as here, those rules are completely abandoned, the risk of injustice becomes a strong probability. We therefore respectfully request this Court to grant this petition to announce in unequivocal terms the appropriate evidentiary limitations upon pre-conspiracy declarations.

## III.

## THE TRIAL COURT'S INSTRUCTION AS TO THE CHARGE IN COUNT 2 EXPANDED THE INDICTMENT CONTRARY TO THE RULE OF STIRONE v. UNITED STATES, 361 U.S. 212 (1960).

Over defendants' objections, the trial court instructed the jury that they could find the defendants guilty of misapplication of Concord's funds under 18 U.S.C. § 657 (Count 2 of the indictment) if the jury found that any one of the following occurred, coupled with wilfulness and intent to defraud (A. 899):

> (a) An officer of Concord (Hickey) made a loan to his own benefit, but concealed his interest in the loan from Concord;
>
> (b) An officer of Concord (Hickey) caused a loan to be made knowing that the loan was insufficiently secured, and concealed that fact from Concord; or

(c) An officer of Concord (Hickey) knowingly caused a loan to be made to a fictitious borrower.

Defendants objected to the first and third illustrations of misapplication in this instruction on the ground that they are not charged in the indictment. (A. 885-6.) These objections were overruled. (A. 886.) The Court of Appeals upheld the instruction as given. (App. 32-35.)

## A.

### The Trial Court's Instruction Varied Materially From the Crime Charged In the Indictment.

This Court long ago held that "misapplication" as used in the predecessor to Section 657 (Sec. 5209 of the Revised Statutes) has no settled technical meaning. Accordingly, a defendant must be informed with some specificity *in the indictment* how the alleged misapplication was accomplished. *United States* v. *Britton*, 107 U.S. 655, 669 (1882).

In Count 2 of this indictment, it is charged that the misapplication consisted of Hickey's causing Concord to make two loans, "well knowing" that Concord "did not receive sufficient collateral to secure the said alleged mortgage loans." (A. 6.) *There is nothing in Count 2 relating to Hickey concealing his interest in the loan, or a loan to a fictitious borrower.*

Although defendants were charged in the indictment under one theory of misapplication, two additional theories of criminality were submitted to the jury in the trial court's instructions. In approving this procedure, the Court of Appeals contravened the rule that " . . . a charge in an indictment cannot be broadened [by] . . . an instruction to the jury." *United States* v. *Spector*, 326 F.2d 345, 347 (7th Cir. 1963).

The ruling of the Court of Appeals is in conflict with the principle reiterated by this Court in *Stirone* v. *United States*, 361 U.S. 212, 217, 219 (1960):

> " . . . a court cannot permit a defendant to be tried on charges that are not made in the indictment against him.
>
> * * *
>
> " . . . The right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment. Here, as in the *Bain* case [*Ex parte Bain*, 121 U.S. 1 (1887)], we cannot know whether the grand jury would have included in its indictment a charge that commerce in steel from a nonexistent steel mill had been interfered with. Yet because of the court's admission of evidence and under its charge this might have been the basis upon which the trial jury convicted petitioner. If so, he was convicted on a charge the grand jury never made against him. This was fatal error. [Citing cases.]"

Similarly, in this case, the conviction of defendants may well have been based upon the uncharged illustrations of "misapplication" contained in the trial court's instructions. The Court of Appeals thus sanctioned a violation of defendants' Fifth Amendment right that the prosecution be begun by indictment.

**B.**

**The Erroneous Instruction As To the Meaning of "Misapplication" Infected the Entire Judgment.**

Government counsel used the erroneous "misapplication" instruction as the basis for his argument to the jury. (Transcript 3189-90, 3194-95, 3209-15.) He repeatedly emphasized that a conviction could be voted on Count 2 if the jury found concealment of Hickey's position or a

fictitious borrower, regardless of the adequacy of the security. Since the jury might have determined that the defendants were guilty under Count 2 because of the erroneous explanation given to them as to the meaning of Section 657, all convictions under Count 2 should be reversed. *Cf. U.S.* v. *Klock,* 210 F.2d 217, 222 (2nd Cir. 1954).

For the same reason, the convictions under Count 1, the conspiracy count, should be set aside. That count charged a conspiracy to commit the crimes involved in both Counts 2 and 3. Here again, the jury's verdict may have been grounded on the erroneous definition of "misapplication".

The confusion which the "misapplication" instruction injected into the case as to the distinctions between the crimes charged in Counts 2 and 3 requires reversal of the convictions under Count 3 as well. The instructions were confusing because the jury was told that the specific charge in Count 3 of the indictment—that Hickey participated in and benefitted from the proceeds of the loans in question—was an example of misapplication under Count 2. (Compare the instruction at A. 900 as to the elements of Count 3.)

## IV.

**THE REFUSAL TO PERMIT DEFENSE COUNSEL TO CROSS EXAMINE GOVERNMENT WITNESSES AT THE TIME THEIR TESTIMONY WAS ADMITTED AGAINST DEFENDANTS VIOLATED DEFENDANTS' CONSTITUTIONAL RIGHT OF CONFRONTATION OF ADVERSE WITNESSES.**

**THIS IS AN IMPORTANT AND NOVEL FEDERAL QUESTION WHICH SHOULD BE RESOLVED BY THIS COURT.**

Throughout the trial, as the prosecution witnesses were called, government counsel stated that the testimony was

offered only against the particular defendants involved in the conversations and transactions to which the witness proposed to testify, whereupon the trial judge directed the jury not to consider the testimony as against any other defendant.

In most instances, counsel for the defendants against whom the testimony was not offered declined to cross examine such witnesses.

At the close of the government's case, the government's motion to have all of the evidence considered against all defendants was granted. (A. 345.) Defense counsel thereupon requested an opportunity to cross examine the witnesses whose testimony had not previously been admitted against their respective clients. The trial court denied these requests. (A. 339, 343-345.)

The Court of Appeals upheld the trial court's ruling on the basis of "practical necessity" and "tradition". The Court held that counsel for defendants must cross examine each government witness at the close of his direct examination—although his testimony is not offered as to one or more of the defendants—or not at all. The Court said (App. 36):

> "In the trial of a conspiracy case, each witness is offered for a dual purpose: first, to show individual participation in the conspiracy by its various members, and second, to prove the conspiracy itself. Even though the testimony of a witness is temporarily limited to the first purpose, his testimony is nonetheless offered for the second purpose. Defendants' counsel were charged with this knowledge. They deliberately took the risk that the limitation would be removed whenever the Government made a prima facie showing of the existence of a conspiracy."

No "dual purpose" was announced or suggested at the time the government witnesses took the stand. As each witness was called, his testimony was offered as to particular defendants, and the trial judge specifically instructed the jury not to consider the testimony against the other defendants.

The constitutional right of cross examination of adverse witnesses arises at the time the witnesses' testimony is offered against the defendant, and not before. In cases involving multiple defendants, a government witness does not become a "witness against" one defendant when the witness testifies solely against a co-defendant. Until the trial judge directs that the testimony is admissible against the defendant, the testimony is irrelevant to the government's case against that defendant. For purposes of *his* case, it is as though the witness had not taken the stand. The witness becomes a "witness against" the particular defendant for the first time if and when the trial judge rules that his testimony is admissible against the particular defendant. It is at that time, and not before, that the constitutional right of confrontation and its concomitant of cross examination arises.

The contrary holding of the Court of Appeals misconstrues and dilutes the protection afforded all defendants by the Sixth Amendment, and amounts to a denial of that right.

There are several sound tactical reasons why a trial lawyer in a conspiracy case might not wish to cross examine a witness whose testimony is not then offered against his client. Most important is the reasonable fear that the cross-examiner might unwittingly elicit damaging testimony, and thus aid the government in establishing a *prima facie* case of conspiracy against his client. But when the testimony is admitted against his client, defense

counsel has the duty and, we submit, the right, to cross examine the witness if he believes his client's interests require inquiry.

To hold, as the Court of Appeals does, that in this posture, "tradition" and "practical necessity" override a defendant's right to full and complete cross examination of a witness when that witness testifies against him, further compounds the dangers of unfairness inherent in conspiracy prosecutions.

The Court of Appeals concluded that "Failure to cross examine at that time [*i.e.*, when the witnesses were originally called] was a waiver of the right to do so." (App. 36.)

It is incomprehensible how a defendant can be held to have waived his constitutional right of cross examination, when the witnesses' testimony had not even been offered against him at the time of the supposed waiver.

Further, in light of the *Krulewitch*, *Lutwak*, and *Grunewald* cases (above, pp. 15 to 22), it is unreasonable to assume that defendants' counsel deliberately took the risk that the trial court would direct the jury to consider *all* of the evidence (including pre- and post-conspiracy declarations which were neither relevant to nor in furtherance of the conspiracy) as against *all* defendants (including those who had not participated in the conversations in question).

The holding of the Court of Appeals on waiver of the constitutional right of cross examination runs directly counter to the very recent rulings of this Court in *Brookhart* v. *Janis*, 86 S. Ct. 1245 (1966), and *Pointer* v. *Texas*, 380 U.S. 400 (1965). In *Brookhart*, this Court said (86 S. Ct. at 1247):

> ". . . unless petitioner did actually waive his right to be confronted with and to cross-examine these wit-

nesses, his federally guaranteed constitutional rights have been denied. . . .

". . . There is a presumption against the waiver of constitutional rights [citing case], and for a waiver to be effective it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege.' [Citing case.]"

This novel and important constitutional question ought to be settled by this Court.

## CONCLUSION

For the foregoing reasons, we respectfully pray that this Court issue its writ of certiorari to review the judgment of the Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

ALBERT E. JENNER, JR.
THOMAS P. SULLIVAN
HUGH M. KING
135 S. LaSalle
Chicago, Illinois 60603
ROBERT J. LEALI
329 Lake
Woodstock, Illinois
*Attorneys for petitioners*

*Of counsel*:
RAYMOND, MAYER, JENNER & BLOCK
CARROLL, LEALI and GITLIN

July 15, 1966